In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-276

FRANCES W. TAYLOR, ETC., PETITIONER

v.

UNITED STATES OF AMERICA, AND MYRTLE L. JARVEY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

1. Petitioner is the daughter and executrix of the estate of Guy Winslow, a veteran who died in May 1968. She challenges the determination of the Veterans Administration awarding the proceeds of Winslow's $10,000 Government Life Insurance policy to respondent Mrs. Jarvey, who was the named beneficiary of the policy. The complaint was based upon the fact that, two months before his death, Mrs. Jarvey had obtained a divorce from Winslow in a court decree directing her "* * * to waive and relinquish any claim which she may have against the Defendant for payment of support, maintenance or alimony, and any claim which she may now or in the future have, as heir, legatee, devisee, creditor or otherwise against

477-695—72

the defendant's estate" (Pet. App. 21).[1] Petitioner argues that the effect of the decree was to require Mrs. Jarvey to relinquish any claim to the proceeds of the policy.

The district court (Pet. App. 20–23) upheld the Veterans Administration's determination allowing the claim of Myrtle L. Jarvey (Pet. App. 23–31) and the court of appeals affirmed *per curiam* (Pet. App. 17–20).

2. There is no reason for further review. The provisions of the divorce decree upon which petitioner relies do not expressly, or by implication, relate to the insurance policy. Moreover, petitioner does not contend that, apart from the decree, Winslow had manifested any intention to change the beneficiary of the policy. As the Veterans Administration pointed out in its decision (Pet. App. 24–25), Winslow had been informed some years earlier (when he had divorced a previous wife) that the Veterans Administration is without authority to effect a change of beneficiary upon the basis of a property settlement. Notwithstanding this advice, Winslow did not attempt to change the named beneficiary after his divorce from Mrs. Jarvey.[2]

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[1] The divorce decree also required Mrs. Jarvey "to turn over to [Winslow] all his personal papers * * *" (Pet. App. 21).

[2] Contrary to petitioner's contention, the holding below does not conflict with any other decision. The resolution of a dispute of this nature necessarily depends upon the facts and circumstances of the particular case. The court's decision in *O'Brien* v. *Elder*, 250 F.2d 275 (C.A. 5), on which petitioner relies, turned upon the court's view of "the condition of the parties, the object which they had in view and the nature of the [settlement] agreement * * *." 250 F.2d at 279.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

SEPTEMBER 1972.

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